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8 UNITED STATES BANKRUPTCY COURT  
9 FOR THE DISTRICT OF OREGON

10 In Re: ) Bankruptcy Case  
11 ) No. 04-69352-aer7  
12 GARY RICHARD WYNN and )  
PAMELA ANN WYNN, ) MEMORANDUM OPINION  
13 )  
Debtors. )

14 This matter comes before the court on the Chapter 7 Trustee's  
15 (Trustee) motion for turnover of proceeds from a pre-petition sale of  
16 Debtors' homestead. The parties submitted pre-hearing briefs. After a  
17 scheduled hearing, at which there were no appearances, the matter was  
18 taken under advisement. Based upon the court's findings and conclusions  
19 which follow, the trustee's motion will be denied.

20 Facts:

21 The facts pertinent to this opinion are set forth in the parties'  
22 briefs. They do not appear to be in dispute.

23 Sometime in September, 2004, Debtors separated. On November 2,  
24 2004, Debtors sold their marital home and deposited \$33,000 in their  
25 attorney's trust account. On November 30, 2004, Debtors filed their  
26 Chapter 7 petition, herein, listing the \$33,000 on Schedule B and

1 claiming it as exempt proceeds on Schedule C pursuant to ORS 18.395.  
2 Trustee objected to the exemption claim ". . .if either it is not  
3 reinvested as required by the statute or if the home which was sold was  
4 not the debtor's residence as required by ORS 18.395."<sup>1</sup> On June 14,  
5 2005, Debtors were divorced pursuant to a stipulated judgment of  
6 dissolution entered in the Circuit Court of the State of Oregon for  
7 Klamath County.

8 From the time of the sale in November, 2004, Debtors rented  
9 separate housing. During the year following the sale, Debtor Gary Wynn  
10 (Gary) paid \$6,000 in rent; Debtor Pamela Wynn (Pamela) paid \$1,643 in  
11 rent. On October 22, 2005, Pamela purchased a new home, using at least  
12 \$25,357 of the proceeds. Gary did not purchase a new home within a year  
13 of sale.<sup>2</sup>

14 Issue:

15 The issue here turns on the allocation and character of the  
16 homestead exemption. By implication, Trustee argues that rent does not  
17 qualify as "reinvestment". She also contends that Pamela has spent more  
18 than her share of the proceeds.<sup>3</sup>

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20 <sup>1</sup> The objection contained a self-effectuating order if Debtors did not  
21 timely request a hearing. In fact, Debtors did not request a hearing. Trustee  
22 does not press the effect of the self-effectuating order, probably because it  
is couched in conditional language, the meaning of those conditions being the  
issue here.

23 <sup>2</sup> It is unclear whether the monies paid as rent came from the \$33,000 held  
24 in trust. The underlying issue is the validity of Debtors' exemption claim.  
25 Under FRBP 4003(c), Trustee has the burden of proof to show that the exemption  
is not properly claimed, Kelley v. Locke (In Re Kelley), 300 B.R. 11 (9<sup>th</sup> Cir.  
B.A.P. (N.D. Cal.) 2003), thus she bears the consequences of any lack of proof.

26 <sup>3</sup> Trustee posits three scenarios: 1) Pamela is entitled to a \$25,000  
(continued...)

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1 intent to invest the proceeds in another homestead; and 2) the debtors  
2 must in fact reinvest those proceeds in another homestead within a year  
3 of their receipt. In Re Earnest, 42 B.R. 395, 397 (Bankr. D. Or. 1984)  
4 (interpreting identical language in the former statute, ORS 23.240(2)).

5 Rent as Reinvestment:

6 Trustee addresses each debtor's entitlement to the exemption.  
7 She argues Gary lost the exemption by not reinvesting within one year.<sup>5</sup>  
8 This argument implies that rent is not reinvestment. Debtors argue that  
9 rent is reinvestment in reliance on Sticka v. Casserino, (*In Re*  
10 *Casserino*), 379 F.3d 1069 (9<sup>th</sup> Cir. 2004). In Casserino, the court held  
11 a month-to-month tenancy can support an Oregon homestead exemption claim.  
12 There, the court held that a security deposit and last month's rent  
13 qualify as exempt under the homestead exemption. Accordingly, it seems  
14 clear that monthly rent also qualifies. As such, the proceeds paid as  
15 rent by Gary and Pamela are exempt.

16 Allocation:

17 Trustee argues, that despite Pamela's timely reinvestment of the  
18 remaining \$25,357 in a new homestead, a portion thereof is not exempt.  
19 She argues, citing this court's opinion in In Re Meyers, Case  
20 #698-63466-aer7 (Bankr. D. Or. Jan. 21, 1999)(unpublished)  
21 (Radcliffe, J.), that any one debtor, subject to the joint exemption, is  
22 not entitled to more than the maximum exemption amount for an individual  
23 debtor (here \$25,000). Trustee's reliance on Meyers is misplaced.

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25 <sup>5</sup> Trustee does not question, and the court does not address, whether joint  
26 debtors may reinvest in different properties, as here.

1           In Meyers, each spouse filed a separate Chapter 7 case. Each  
2 sought to claim, in the same property, the \$25,000 homestead exemption  
3 then allowed a single debtor. (See, former ORS 23.240(1).) The  
4 husband's case was filed first, his exemption was allowed. The wife  
5 filed while the husband's case was still open. At the time, she was not  
6 living in the homestead (her homestead claim was based on her vicarious  
7 occupancy through her husband.) The wife indicated she was either  
8 contemplating or in the process of obtaining a divorce. The main issue  
9 was whether the husband and wife were "members of a household" (even  
10 though they were living separately) for purposes of former ORS 23.240(1)  
11 (now, ORS 18.395(1)), thereby limiting the exemption to the (then  
12 \$33,000) maximum for joint debtors. This court held the husband and wife  
13 were members of the same household, thereby limiting the wife to an  
14 \$8,000 exemption, because the husband had already been allowed a \$25,000  
15 exemption. This court's rationale, after examining the statute's  
16 legislative history, was that the household exemption for joint debtors  
17 was for a "family purpose" and that a married couple fit within that  
18 purpose.

19           Contrary to Trustee's contention here, Meyers did not limit how  
20 the exemption should be allocated between the husband and wife. There,  
21 because the husband had already been allowed a \$25,000 exemption, the  
22 court was compelled to limit the wife's exemption to \$8,000 *vis a vis her*  
23 *bankruptcy estate and creditors claiming therein*. Significantly, the  
24 court recognized that the \$25,000/\$8,000 split was not binding between  
25 the husband and wife, and that they were free "to seek an equitable  
26 distribution of the aggregate \$33,000 exemption as part of the

1 dissolution proceedings or otherwise." Id. at p. 9, n.3. Here, unlike  
2 Meyers, Gary and Pamela filed a joint case. They have only claimed the  
3 joint homestead exemption in the proceeds. Allowing them to allocate the  
4 proceeds as they choose is in fact contemplated, instead of contravened,  
5 by Meyers.

6 Trustee cites no other authority supporting her position. When  
7 interpreting an Oregon statute, the court looks first to its text, in  
8 context. Premier West Bank v. GSA Wholesale, LLC, 196 Or. App. 640, 649,  
9 103 P.3d 1169, 1175 (2004). As to allocation of homestead proceeds  
10 between joint debtors, ORS 18.395 is silent.

11 Where a statute's language is not determinative, the court may  
12 then look to legislative history. Id. As noted in Meyers, the joint  
13 (household) exemption was added to Oregon's homestead statute in 1975.  
14 Or. Laws 1975, c.208, § 5. None of the legislative history reviewed by  
15 the court, (see discussion in Meyers), addresses the allocation issue at  
16 bar.<sup>6</sup>

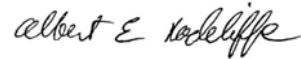
17 If legislative history is to no avail, the court may look to  
18 other interpretive aids. Id. In that regard, the courts have  
19 traditionally construed Oregon's homestead exemption in a "liberal and  
20 humane manner," Casserino, supra at 1072, remembering the homestead  
21 exemption's purpose is to "assure to the unfortunate debtor . . . the  
22 shelter and influence of home." Id. With that policy in mind, the court  
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24 <sup>6</sup> The requirements as to the one year holding period and intent to  
25 reinvest were enacted in substantially their current form in 1919. Or. Laws  
26 1919, c.112, § 1 (codified in Or. Laws § 221(Olson 1920)). Then, there was  
only a single exemption, thus allocation amongst joint debtors was not a  
relevant consideration.

1 concludes that Debtors may allocate the proceeds here at their  
2 discretion<sup>7</sup>.

3 The above constitute the court's findings of fact and conclusions  
4 of law under FRBP 7052; they shall not be separately stated.

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7 ALBERT E. RADCLIFFE  
8 Bankruptcy Judge  
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23 <sup>7</sup>The court rejects Trustee's alternative argument, that Debtors should  
24 somehow be penalized because they did not keep the Trustee apprised of their  
25 reinvestment, nor did they obtain a court order authorizing same. There is  
26 nothing in the record except Trustee's bare argument indicating Debtors failed  
to keep Trustee advised. Trustee has the burden to show the exemption is not  
properly claimed. FRBP 4003(c). In the case at bar, the proceeds were fully  
disclosed on Schedule B as being in Debtors' attorney's trust account. In any  
case, there was no prejudice to the estate. The proceeds were all reinvested  
appropriately.